

**TTAB**

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**UNITED STATES PATENT AND TRADEMARK  
OFFICE**

**Trademark Trial and Appeal Board**

**P.O. Box 1451**

**Alexandria, VA 22313-1451**

Mailed: November 14, 2005

Ginkgo International; Ltd.

5107 Chase Street  
Downers Grove, IL 60515

**Cancellation No. 92045152**

Reg. No. 2789847

Susan B. Flohr  
BLANK ROME LLP  
The Watergate; 600 New Hampshire Ave. N.W  
Washington, DC 22037



James A. Frost, dba Frost Cutlery

V.

**12-05-2005**

U.S. Patent & TMO/TM Mail Rpt Dt #34

Ginkgo International, Ltd.

**Helen Johnson, Legal Assistant**

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

**ANSWER IS DUE FORTY DAYS** after the mailing date hereof.  
(See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12,

2003). Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available at [www.uspto.gov/web/offices/dcom/ttab/](http://www.uspto.gov/web/offices/dcom/ttab/).

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

**Discovery and testimony periods are set as follows:**

Discovery period to open: December 04, 2005

Discovery period to close: June 02, 2006

30-day testimony period for party  
in position of plaintiff to close: August 31, 2006

30-day testimony period for party  
in position of defendant to close: October 30, 2006

15-day rebuttal testimony period  
for plaintiff to close: December 14, 2006

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

**NOTE:** The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the

Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

**New Developments at the Trademark Trial and Appeal Board**

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

ESTTA Tracking number: **ESTTA52380**

Filing date: **11/08/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

### Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

#### Petitioner Information

<b>Name</b>	JamesAFrost		
<b>Entity</b>	Individual	<b>Citizenship</b>	UNITED STATES
<b>Address</b>	6861 Mountain View Rd. Ooltewah, TN 37262 UNITED STATES		

<b>Attorney information</b>	Susan B. Flohr Blank Rome LLP 600 New Hampshire Ave., NW Washington, DC 20037 UNITED STATES flohr@blankrome.com, trademarks@blankrome.com Phone:202 772 5870
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#### Registration Subject to Cancellation

<b>Registration No</b>	2789847	<b>Registration date</b>	12/02/2003
<b>Registrant</b>	Ginkgo International, Ltd. 5107 Chase Street Downers Grove, IL 60515 UNITED STATES		
<b>Goods/Services Subject to Cancellation</b>	Class 008. First Use: 20030630, First Use In Commerce: 20030630 Goods/Services: Table flatware, namely, knives, forks, and spoons		

<b>Attachments</b>	patriot petition.pdf ( 3 pages )
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<b>Signature</b>	/sbf/
<b>Name</b>	Susan B. Flohr
<b>Date</b>	11/08/2005

115042.00148

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 2789847  
Registrant: Ginkgo International, Ltd.  
Mark: PATRIOT  
Registered: December 2, 2003

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:  
JAMES A. FROST, :

:  
: Petitioner, :

:  
v. : Cancellation No. \_\_\_\_\_

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Ginkgo International , Ltd.  
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:

:  
Registrant. :  
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PETITION TO CANCEL

James A. Frost, dba Frost Cutlery, a United States citizen, having his principal place of business at 6861 Mountain View Road, Ooltewah, TN 37363 ("Frost"), believes that he will be damaged by Registration No. 2789847, registered December 2, 2003, for the mark PATRIOT for table flatware, namely knives, forks, and spoons, in class 8, and hereby petitions to cancel the same. The grounds of the petition are as follows:

1. Prior to the date on which Registrant claims to have first used the PATRIOT mark, namely, June 30, 2003, Petitioner adopted and used his PATRIOT TACTICAL I trademark in interstate commerce on and in connection with cutlery, namely pocket and collector's knives ("Petitioner's Goods"). Petitioner has used his PATRIOT TACTICAL I trademark on such goods in commerce since at least as early as December 31, 2002, and continues to use such mark for said goods.

2. Petitioner is the owner of Application S/N 78340751 for the mark PATRIOT TACTICAL I mark, filed December 15, 2003, for Petitioner's Goods.

3. Petitioner's PATRIOT TACTICAL I trademark, by virtue of its long term and substantial use since at least as early as 2002, has acquired great value as an identification of the origin of Petitioner's knives. Through extensive sales and advertising of Petitioner's Goods under the PATRIOT TACTICAL

I trademark, Petitioner has built up, at significant expense and effort, valuable goodwill, which is likely to be injured by the registration obtained by Registrant unless it is cancelled, to Petitioner's irreparable damage.

4. In an action dated May 9, 2005, the examiner assigned to Petitioner's Application S/N 78340751 for its PATRIOT TACTICAL I mark, refused registration thereto under section 2(d) of the Lanham Act on the basis that concurrent use of Petitioner's mark for the goods covered by its pending application and the Registrant's mark for the goods covered by the registration sought to be cancelled, is likely to cause confusion to prospective purchasers.

5. If as the examiner contends the trademark PATRIOT covered by the registration herein sought to be cancelled, so resembles Petitioner's previously used trademark PATRIOT TACTICAL I when applied to the goods of Petitioner to be likely to cause confusion, to cause mistake, or to deceive within the meaning of the Trademark Act of 1946, then Petitioner may be damaged since Reg. No 2789847 will stand as a bar to registration of Petitioner's PATRIOT TACTICAL I mark, and therefore such registration should be cancelled because Petitioner has priority of use.

WHEREFORE, Petitioner prays that this Petition for Cancellation be sustained in favor of Petitioner and that Registration No. 2789847 be cancelled.

A check in the amount of \$300 accompanies this petition to cover the petition fee.

Respectfully submitted,  
/sbf/

By: \_\_\_\_\_  
Susan B. Flohr  
Attorneys for Petitioner  
BLANK ROME LLP  
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Washington, D.C. 20037  
(202) 772-5870  
(202) 572-1407 (Facsimile)

Date: 11-7-05

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